

CIVIL SERVICE COMMISSION MINUTES

MARCH 17, 2004

A meeting of the Civil Service Commission was held at 2:30 p.m., in the 6th Floor Tower at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Marc Sandstrom
Gordon Austin
A.Y. Casillas
Barry I. Newman
Francesca Krauel

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission

April 7, 2004

COUNTY OF SAN DIEGO
CIVIL SERVICE COMMISSION MINUTES
MARCH 17, 2004

1:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: 6th Floor Tower, 1600 Pacific Highway, San Diego, California 92101

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>1,2,3,5,6,7,8</u>			

COMMENTS: Motion by Newman to approve all items not held for discussion; seconded by Casillas. Carried. Commissioner Krauel abstained.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the public may be present at this location to hear the announcement of the closed session agenda.

- A. Commissioner Casillas: Fern Steiner, Esq., on behalf of **Rick Harmon**, former Junior Accountant, appealing an Order of Termination and Charges from the Department of General Services.
- B. Commissioner Austin: Michael O'Connor, SEIU Local 2028, on behalf of **Mario Nava**, Park Maintenance Worker, appealing an Order of Suspension and Charges from the Department of Parks and Recreation.
- C. Commissioner Casillas: **Luis Estrada**, former Human Services Specialist, appealing an Order of Removal and Charges from the Health and Human Services Agency.
- D. Commissioner Newman: Richard Pinckard, Esq., on behalf of **2003/007***, Deputy Sheriff, appealing the Citizens' Law Enforcement Review Board's sustained finding of misconduct.
- E. Public Employee Performance Evaluation: Executive Officer

OPEN SESSION AGENDA
County Administration Center, 6th Floor Tower

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and approved by the Commission President.

WELCOME

1. Welcome Francesca Krauel, Esq., newly appointed Civil Service Commissioner.

ELECTIONS

2. Election of President and Vice-President of the Civil Service Commission for the remainder of 2004.

Motion by Newman to nominate Marc Sandstrom as President; seconded by Austin. Carried. Marc Sandstrom appointed.

Motion by Newman to nominate A.Y. Casillas as Vice-President; seconded by Austin. Carried. A. Y. Casillas appointed.

MINUTES

3. Approval of the Minutes of the regular meeting of February 18, 2004.

Approved.

DISCIPLINES

Findings

4. Commissioner Casillas: Fern Steiner, Esq., on behalf of **Rick Harmon**, former Junior Accountant, appealing an Order of Termination and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetence (unable to locate source documents to support the data filled in on the Auditor's Forms); Cause II - Failure of Good Behavior (inappropriate and offensive behavior); Cause III - Inefficiency; Cause IV - Negligence or Willful Misconduct resulting in damage to public property or waste of public supplies; Cause V - Conduct Unbecoming an Officer of Employee of the County; Cause VI - Discourteous treatment of the public or other employees; Cause VII - Violation of Charter or Civil Service Rules; and Cause VIII - Violation of acts that are incompatible with or inimical to the public service.

Appellant appealed an Order of Termination with several causes but generally alleging incompetence and an incident of sexual harassment. The evidence at the Commission hearing established an employee with an exemplary performance record established over approximately seventeen years under multiple supervisors in contrast to poor performance during approximately the last half-year of his employment under a single supervisor. While Appellant admitted recent performance deficiencies, his long record of good performance coupled with doubts about the Performance Improvement Plan grading system, which was used as the basis for his

termination, and about the management style of his final supervisor, require that he be given another opportunity under a different supervisor. Nevertheless, his admitted performance deficiencies merited discipline in the form of a ninety-day suspension.

Employee is guilty of Cause I; Cause III; Cause IV; Cause V and Cause VII (both relating to charges under Cause I, only). Employee is not guilty of Cause II, Cause V (relating to charges under Cause II); Cause VI; Cause VII; and Cause VIII (relating to charges under Cause II). It is therefore recommended that the Amended Final Order of Termination and Charges be reduced to a ninety-day (90) suspension without pay; that Employee be awarded back pay, benefits, and interest from the date of termination until the first day of the hearing on January 22, 2004, less ninety days (90), and minus any wages he received from outside employment. (Employee was responsible for the continuance and delay after the first day of the hearing); that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Austin. Carried.

5. Commissioner Austin: Michael O'Connor, SEIU Local 2028, on behalf of **Mario Nava**, Park Maintenance Worker, appealing an Order of Suspension and Charges from the Department of Parks and Recreation.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause 1 - Insubordination (left 3 juvenile inmates unattended while going into a Von's supermarket); Cause 2 - Negligence resulting in harm or significant risk of harm to the public or the public service (the unattended juveniles were observed verbally harassing a woman walking to her car).

Appellant is a Park Maintenance Worker in the Department of Parks and Recreation. He has been employed there for approximately two years. He was charged with insubordination and negligence for leaving three juvenile inmates, whom he supervised on a work detail, unattended in his County vehicle while he went into a store to purchase refreshments for them. During that time they verbally harassed a passer-by. He was disciplined with a four (4) workday suspension. However, at the Commission hearing, the Department was unable to establish that Appellant had ever been informed that he was prohibited from leaving work detail inmates unattended, even for short periods. Appellant's training had been very informal and abbreviated. At the time of Appellant's training, the Department had no written policies about supervising inmate work details. Therefore, the Department was unable to establish that Appellant had been insubordinate.

Additionally, under all of the circumstances present, the Department was unable to show that Appellant had acted negligently. As a result, the discipline in its entirety should be set aside.

The Department failed to prove the charges contained in the Order of Suspension and Charges. Employee is not guilty of Cause I and Cause II. It is therefore recommended that the Order of Suspension and Charges be reversed; that the Employee be reimbursed for back pay, benefits, plus interest for four (4) eight-hour workdays (32 hours) less any amounts received for employment during the suspension in accordance with this proposed decision; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Austin to approve Findings and Recommendations; seconded by Newman. Carried.

AYES: Sandstrom, Casillas, Austin, Krauel
NOES: None
ABSTENTIONS: Newman

6. Commissioner Casillas: **Luis Estrada**, former Human Services Specialist, appealing an Order of Removal and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Dishonesty (entered false information into the Medi-Cal automation system); Cause II - Inefficiency; Cause III - Incompetency (backlog of Medi-Cal renewal cases); Cause IV - Insubordination; Cause V - Conduct unbecoming a employee of the County; Cause VI - Failure of good behavior; and Cause VII - Acts incompatible with or inimical to the public service.

The Health and Human Services Agency terminated Employee for, among other things, recertifying the eligibility of Medi-Cal benefit recipients without performing the review necessary to do so. The Agency terminated Employee for the same reasons in the year 2000 but Employee appealed to the Commission and the termination was reduced to a suspension. Employee had been recertifying Medi-Cal eligibility in this manner because he was falling behind in his caseload. However, under the circumstances present in the prior appeal, the Commission could not sustain the Agency's Dishonesty charge because it could not "make the requisite finding that Employee intended to be dishonest." Nevertheless, the disciplinary process in the prior appeal placed Employee on notice that such conduct constituted a misrepresentation that he actually reviewed a Medi-Cal recipient's eligibility and that it exposed the County to severe consequences. Additionally, Employee was instructed to notify his supervisors if he again fell behind in his caseload and he was given further training. Testimony and evidence presented at the hearing in his present appeal

established that Employee was still unable to keep pace with a normal caseload and again responded by fraudulently recertifying Medi-Cal eligibility. Moreover, Employee admitted to his supervisors that his conduct was dishonest.

Employee is guilty of Cause I; Cause II; Cause III; Cause IV; Cause V; Cause VI and Cause VII. It is therefore recommended that the Order of Removal and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Casillas to approve Findings and Recommendations; seconded by Newman. Carried.

CITIZENS' LAW ENFORCEMENT REVIEW BOARD (CLERB)

Findings

7. Commissioner Newman: Richard Pinckard, Esq., on behalf of **2003/007***, Deputy Sheriff, appealing CLERB's sustained finding of misconduct.

FINDINGS AND RECOMMENDATIONS:

Appellant is a Deputy Sheriff accused of submitting a "Notice to Appear" citation to the court with a falsified signature. The person to whom the citation was purportedly issued filed a complaint alleging that the signature of his name thereon was a forgery. The complaint also alleged discrimination. The Sheriff's Department investigated and rejected both allegations. The Citizen's Law Enforcement Review Board ("CLERB") investigated and sustained the falsification allegation (though not the discrimination allegation). Appellant appealed CLERB's finding to the Civil Service Commission under Civil Service Rule XV. At the Commission hearing, CLERB established that the signature did not belong to the complainant. CLERB further established that the Appellant was the person in possession and control of the citation until he submitted it to his superiors with the signature. The Appellant, choosing not to testify, provided no competent evidence to rebut CLERB's finding against him. Accordingly, the CLERB finding that Appellant provided a falsified citation for submission to the court is sustained.

It is therefore recommended that the Civil Service Commission affirm CLERB's sustained findings that Appellant knowingly submitted a citation for processing that contained the forged signature of Everardo Vega Pineda; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Casillas. Carried.

COMPULSORY LEAVE

Findings

8. Commissioner Sandstrom: Stephine M. Wells, Esq., on behalf of **Sue Tiu**, Child Support Officer, appealing Ms. Tiu's placement on Compulsory Leave by the Department of Child Support Services.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of Sue Tiu, regarding her alleged placement on Compulsory Leave from her class and position of Child Support Officer in the Department of Child Support Services (DCSS) was presented to the Civil Service Commission. The Commission granted Ms. Tiu a hearing to be conducted in two phases in order to determine the actual status of the leave in question; the second phase to be utilized if it was determined that the DCSS did place Ms. Tiu on compulsory leave.

An initial hearing was held to determine if the Commission had jurisdiction to hear Appellant's appeal under the County Compensation Ordinance Section 4.3.8 pertaining to "Compulsory Leave." The issue before the Commission at this initial hearing was whether Appellant was placed on compulsory leave or agreed to voluntary leave. The testimony and other evidence at the hearing established that Appellant agreed to voluntary leave. It is therefore recommended that Appellant's leave from November 20, 2003 to the present be deemed voluntary leave; the Appellant's appeal under County Compensation Ordinance 4.3.8 "Compulsory Leave" be dismissed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Sandstrom to approve Findings and Recommendations; seconded by Austin. Carried.

OTHER MATTERS

9. Public Input.

ADJOURNMENT: 3:15 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 7, 2004.

* The identity of the peace officer is held confidential per Penal Code Section 832.7 (San Diego Police Officers' Association, et al. v. City of San Diego Civil Service Commission).